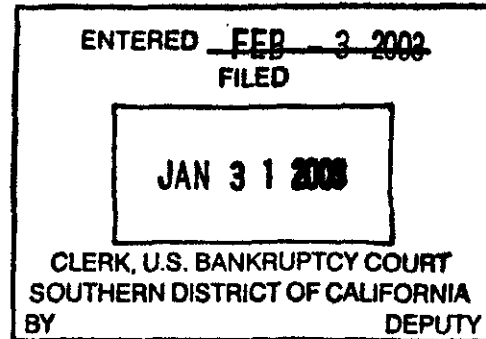


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FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re) Case No. 02-06410-B7
)
DWYNN GREENFIELD and AIMEE)
GREENFIELD,) OPINION
)
Debtors.)
)

The Debtors seek to exempt from their bankruptcy estate an "individual retirement account" (IRA) which Aimee Greenfield inherited pre-petition from her father. The Trustee objects to the claim of exemption on the ground that the IRA is not being used by the Debtors for retirement purposes.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 312-D of the United States District Court for the Southern District of California. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

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1 **FACTS**

2 In November of 2000, Aimee Greenfield (Debtor) inherited
3 from her father an "individual retirement account" (IRA). From
4 the date of the inheritance through the present the Debtor has
5 taken regular disbursements from the IRA as required by the
6 Internal Revenue Code (IRC). When the Debtors filed their
7 petition commencing this case on June 27, 2002, they sought to
8 exempt the IRA from their bankruptcy estate under California Code
9 of Civil Procedure (CCP) § 703.140(b)(10)(E). The Debtors'
10 schedules indicate that as of the date of the petition the IRA
11 was worth \$67,099.00.

12 On September 26, 2002, Gregory Akers, the Chapter 7 Trustee
13 (Trustee), filed an objection to the Debtors' claim of exemption
14 on the ground that the Debtors were not using the IRA for
15 retirement purposes.

16
17 **DISCUSSION**

18 **Burden**

19 There is disagreement as to which party bears the burden of
20 proving whether or not the exemption is properly claimed.
21 Bankruptcy Rule 4003(c) places the burden of proving that an
22 exemption is not properly claimed on the party objecting thereto
23 -- the Trustee in our case.¹ However, the propriety of Rule

24 ¹ Rule 4003(c) provides:

25 In any hearing under this rule, the objecting party has the burden of proving that
26 the exemptions are not properly claimed. After hearing on notice, the court shall
determine the issues presented by the objections.

1 4003(c) in a case such as this has been called into question. In
2 In re Barnes, 275 B.R. 889 (Bankr.E.D.Cal. 2002), the court
3 noted:

4 The allocation of the burden of proof in Rule
5 4003(c) may run afoul with the Supreme Court's recent
6 decision in Raleigh v. Illinois Department of Revenue,
7 530 U.S. 15 (2000). In Raleigh, the debtor was the
8 president of a defunct corporation that owed state use
9 taxes. When the taxes were not paid, the state
10 assessed them to the debtor as the responsible
11 corporate officer. The assessment meant that the state
12 believed the debtor was the person who had willfully
13 failed to direct the corporation to pay the taxes.
14 When the debtor filed a chapter 7 petition, the state
15 filed a proof of claim based on its prior assessment.
16 The trustee objected to the proof of claim on the
17 ground that the state had not proven that the debtor
18 was liable for payment of the tax. The Supreme Court
19 rejected this argument, reasoning that outside of the
20 bankruptcy court the corporate officer would have to
21 prove that he was not the person responsible for
22 filing returns and paying taxes for the corporation.
23 Inside bankruptcy court the burden still rests with the
debtor, or the trustee as the representative of the
debtor's estate. The Supreme Court held, then, that
when the matter in dispute is governed by nonbankruptcy
substantive law, the burden of proof is dictated by
that same nonbankruptcy law. Under California law, the
party claiming an exemption has the burden of proof
when claiming or defending the exemption. See
Cal.Civ.Proc.Code § 703.580(b). This includes
exemptions that must be claimed and those that apply
even absent a claim of exemption. See
Cal.Civ.Proc.Code § 703.510(b). Since California has
opted out of the federal exemption scheme, the debtors
must claim California exemptions. See 11 U.S.C. §
521(b)(1); Cal.Civ.Proc.Code § 703.130. The burden of
proof, then, is determined by California law and not
the Bankruptcy Code or the Bankruptcy Rules. In this
case, the debtors have not met the burden of proving
their entitlement to an exemption under section
704.100(a).

24 Barnes, 275 B.R. 889, 899 n.2. Notwithstanding the language
25 quoted above, the actual ruling on the burden issue in the Barnes
26

1 case is not clear. While the footnote set out above seems to
2 place the burden on the debtors, the court also states:

3 While the trustees have the burden of proving under
4 Fed. R. Bankr.P. 4003(c) that the debtors are not
5 entitled to the exemption, the debtors are duty bound
6 by 11 U.S.C. § 521(4) to provide a copy of the contract
7 to the chapter 13 trustee.

8 This seems to indicate that the trustee maintained the ultimate
9 burden.

10 The Ninth Circuit BAP has also discussed the issue:

11 We need not, and do not, address the bankruptcy
12 court's deference to the state court's alternative
13 holding that the debtor did not prove that the funds
14 were necessary for his support upon retirement. The
15 alternative holding was based on the exemption
16 claimant's burden of proof under state law. In
17 contrast, Federal Rule of Bankruptcy Procedure 4003(c)
18 purports to place the burden of proof on the party
19 objecting to a claim of exemption. The issue of
20 whether Rule 4003(c) validly re-allocates the burden
21 of proof imposed by state exemption law need not be
22 decided in this appeal.

23 Williams, 280 B.R. 857, 863 fn. 5 (9th Cir.BAP 2002).

24 The court in Raleigh did indeed look to state law in placing
25 the burden. However, Raleigh dealt with a situation -- an
26 objection to a proof of claim -- for which neither the Bankruptcy
Code nor the Bankruptcy Rules provide a burden of proof:

27 Congress of course may do what it likes with
28 entitlements in bankruptcy, but there is no sign that
29 Congress meant to alter the burdens of production and
30 persuasion on tax claims. The Code in several places,
31 to be sure, establishes particular burdens of proof.
32 See, e.g., 11 U.S.C. § 362(g) (relief from automatic
33 stay), § 363(o) (adequate protection for creditors), §
34 364(d)(2) (same), § 547(g) (avoidability of
35 preferential transfer), § 1129(d) (confirmation of plan
36 for purpose of avoiding taxes). But the Code makes no
provision for altering the burden on a tax claim, and

1 its silence says that no change was intended. [FN2]

2 FN2. The legislative history indicates that the burden
3 of proof on the issue of establishing claims was left
4 to the Rules of Bankruptcy Procedure. See S.Rep. No.
5 95-989, p. 62 (1978); H.R.Rep. No. 95-595, p. 352
6 (1977), U.S.Code Cong. & Admin.News 1978 at 5787. The
7 Bankruptcy Rules are silent on the burden of proof for
8 claims; while Federal Rule of Bankruptcy Procedure
3001(f) provides that a proof of claim (the name for
the proper form for filing a claim against a debtor) is
"prima facie evidence of the validity and amount of the
claim," this rule does not address the burden of proof
when a trustee disputes a claim. The Rules thus
provide no additional guidance.

9 120 S.Ct. 1951, 1955-56 & n.2.

10 Contrarily, in the case of exemptions and objections
11 thereto, the Rules do provide a specific and clear allocation of
12 the burden -- Rule 4003(c). Accordingly, the Raleigh case may
13 not apply.

14 Fortunately, this Court, like the BAP in Williams, is able
15 to resolve the present matter without determining on whom the
16 burden would ultimately fall. That is, the matter can be
17 resolved based upon facts that are not in dispute.

18
19 **Section 703.140(b)(10)(E)**

20 CCP § 703.140(b)(10)(E) provides that a debtor may exempt,
21 in relevant part:

22 (10) The debtor's right to receive any of the
23 following:

24 (E) A payment under a stock bonus, pension,
25 profitsharing, annuity or similar plan or contract on
26 account of illness, disability, death, age, or length
of service, to the extent reasonably necessary for the
support of the debtor and any dependent of the debtor,
unless all of the following apply:

(iii) That plan or contract does not qualify under

1 Section 401(a), 403(b), or 408 of the Internal
2 Revenue Code....

3 The Ninth Circuit has held that Section 703.140(b)(10)(E)
4 covers IRA's in general. In re McKown, 203 F.3d 1188, 1190 (9th
5 Cir. 2000). The court in McKown did not discuss whether a
6 particular IRA would qualify nor did it set out the standards to
7 be applied. However, the bankruptcy court did provide it's
8 reasoning for including an IRA as a "similar plan or contract:"

9 An IRA comes within the scope of section
10 703.140(b)(10)(E) if it is "similar" to a stock bonus,
11 pension, profit sharing, or annuity plan providing for
12 payments to the debtor on account of age. IRAs and
13 stock bonus, pension, profit sharing, and annuity plans
share a common denominator. They are "aimed to enable
working taxpayers to accumulate assets during their
productive years so that they might draw upon them
during retirement."

14 McKown, 203 B.R. 722, 724-25. The Court finds this rationale
15 persuasive and further finds that it argues against the Debtors
16 in this case. The Debtors' IRA is not "aimed to enable working
17 taxpayers to accumulate assets during their productive years so
18 that they might draw upon them during retirement." In the
19 present case the Debtors are using the money now at the
20 relatively young age of forty-one.² The Court recognizes that
21 under the IRC the Debtors have no choice but to use the money
22 now. However, the Debtors themselves explain that, even if not
23 required to take current disbursements, the disbursements are
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26 ² The Debtors provide in their response to the Trustee's objection that Aimee Greenfield
is 41 years old. They provide no age for Dwynn Greenfield.

1 necessary for their current support. See Debtors' Response at
2 6:22-26.

3 The case most directly on point, and one upon which both
4 parties rely, is In re Sims, 241 B.R. 467 (Bankr.N.D.Okla. 1999).
5 In Sims the debtor, like Mrs. Greenfield, inherited an IRA pre-
6 petition. The court held that the IRA could not be exempted
7 under the Oklahoma state exemption scheme which provides an
8 exemption for "any interest in a retirement plan or arrangement
9 qualified for tax exemption purposes under present or future Acts
10 of Congress..." Like the Debtors in the present case, the debtor
11 in Sims had taken distributions from the IRA prior to his
12 retirement. The court reasoned:

13 Once in the hands of Dr. Sims, the IRA is no longer a
14 tool to defer taxation on income in order to provide
15 for retirement; instead, the IRA is a liquid asset
16 which may be accessed by Dr. Sims at his discretion
without penalty, and which he must take as income
within a relatively short period of time without regard
for his retirement needs.

17 Sims, 241 B.R. at 270. The Debtors attempt to distinguish Sims
18 on the grounds that their disbursements have been small and
19 regular as opposed to Sims' two large disbursements.³ However,
20 the Court is persuaded that the size and regularity of the
21 disbursements is of less import than the purpose for the
22 disbursements. In order to qualify for an exemption the IRA must
23 be used for "retirement needs." The Debtors are presently using
24 the IRA funds, but they are simply not of retirement age.
25 Furthermore, it appears from the Debtors' calculations that there

26 ³ Dr. Sims had taken two pre-petition disbursements of \$32,150.00 and \$1,998.00.

1 will be very little if any income from the IRA for the Debtors by
2 the time they reach retirement age. The monthly income from the
3 IRA has already dropped from \$134 in 2002 to \$84 in 2003. See
4 Debtors' Response at 4:11-14.

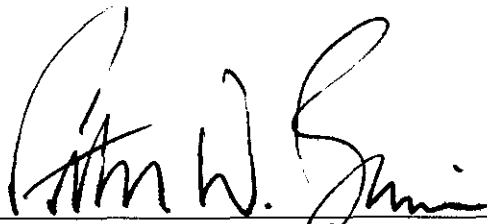
5 In light of the fact that the Debtors are using the IRA
6 primarily for other than retirement purposes, the Court concludes
7 that the Trustee's objection is well taken. The IRA is not
8 exempt under CCP § 703.140(b)(10)(E).⁴

9
10 **CONCLUSION**

11 For the foregoing reasons the Court sustains the Trustee's
12 objection to the Debtors assertion of an exemption - the IRA may
13 not be exempted from property of the Debtors' bankruptcy estate
14 under CCP § 703.140(b)(10)(E).

15 IT IS SO ORDERED.

16 DATE: JAN 31 2003

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18 
19 PETER W. BOWIE, Judge
United States Bankruptcy Court

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26 ⁴ The Debtors also contend that the IRA would be exempt under CCP § 704.115(a)(3).
The Debtors have not, however, asserted an exemption under this section. Therefor, the Court
will not consider this argument.